

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
WESTERN DIVISION

UNITED STATES OF AMERICA

VERSUS

CRIMINAL ACTION NO. 5:98cr13-DCB

BOBBY WILSON, JR.

DEFENDANT

ORDER

Currently pending before the Court is the pro se defendant's Motion to Show Cause [**docket entry no. 31**] for revocation of his probation/supervised release filed on June 18, 2007, and a motion [**docket entry no. 34**] challenging his conviction and the enforcement of his plea agreement filed on July 26, 2007.

In deciding these motions, the Court is obliged to liberally construe all of the pro se defendant's arguments under the appropriate labels. After a preliminary review of these two motions, the Court believes that sufficient grounds have been advanced therein by the defendant to state a colorable claim to habeas corpus relief under 28 U.S.C. § 2254. However, on August 30, 2007, the defendant filed a separate Petition for a Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 [civil action no. 5:07-cv-165].

Therefore, before the Court can recharacterize the instant motions as a § 2254 petition, it is obliged under the authority of Castro v. United States, 540 U.S. 375, 124 S. Ct. 786, 157 L. Ed.

2d 778 (2003), to notify the defendant of its intent to so characterize his motions, warn him that this recharacterization means that any subsequent § 2254 motions (including the one filed with this Court in civil action no. 5:07-cv-165 on August 30, 2007) will be subject to the statutory restrictions on successive § 2254 motions, and give him an opportunity to either withdraw the § 2254 petition from the Court's consideration or to amend the petition so that it contains all of the § 2254 claims he believes he has. Martin v. Overton, 391 F.3d 710, 713 (6th Cir. 2004); Retic v. United States, 215 Fed. Appx. 962, 964, 965 (11th Cir. 2007) (unpublished opinion). The defendant is hereby so advised.

In addition, should the defendant choose to amend his § 2254 petition so that it includes all of his believed § 2254 claims, at the same time the defendant should request leave to amend his petition so that his state custodian is named as respondent.

Accordingly,

IT IS HEREBY ORDERED that within fourteen (14) days from his receipt of this Order, the pro se defendant shall inform this Court whether he wishes to either:

A) withdraw his motions from the Court's consideration to the extent they constitute a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254

[OR]

B) amend his motions so that the Court may consider all of the claims he believes he has under 28 U.S.C. § 2254, and amend his

petition so that his state custodian is named as respondent.

SO ORDERED, this the 3rd day of December 2007.

s/ David Bramlette
UNITED STATES DISTRICT JUDGE